ments still subsists. Then the case must be met where there is no condition, merely a covenant. The shade of Dumpor's case is still powerful, and recently controlled the Court of Appeals of Maryland when the last-mentioned question was presented to it. *Reid* v. *Weissner & Sons Brewing Co.*, 40 Atl. Rep. 877. The lessee there covenanted for himself not to assign the lease without consent; there was no condition. He once assigned with the lessor's consent, and the court holds, upon the authority of Dumpor's case, that the lessor cannot complain when the assignee transfers his interest. True, the decision might have been put on the ground that the assignee, not being mentioned in the covenant, could not have been bound in any event; but this ground is not noticed by the court. Yet the rule in Dumpor's case properly has no application to a covenant, and should not be extended by logic when it is not founded on any sound principle. *Paul* v. *Nurse*, 8 B. & C. 486. Dumpor's case itself contained no covenant; and in *Brummel* v. *MacPherson*, 14 Ves. Jr. 173, the English case which adopted the rule into the modern law, it was admitted in the argument that if the lease in question had contained a covenant, the covenant would have lived after the condition died. In America, too, what little authority there is tends generally in the same direction. *Dakin* v. *Williams*, 22 Wend. 201, 209; *Gannett* v. *Albree*, 103 Mass. 372. It is doubly unfortunate that the rule in Dumpor's case should be extended in the principal case when the decision might have been placed on other grounds, and when the application of the rule cannot be excused by the fact that it avoids a forfeiture.

Tug-boat Marriages and the Lex Domicilii. — A scheme to avoid unpleasant marriage laws has gained some notoriety on the Pacific coast. Relying on the principle that the validity of the marriage is to be judged by the law of the place of its celebration, the parties sail outside the three-mile limit, are married by the skipper, and, according to their statement, return wedded by the law of the high seas. This device met a deserved fate at the hands of the Supreme Court of California when it came before them in the case of *Norman* v. *Norman*, 54 Pac. Rep. 143. The above formula had been gone through by two persons whose ages according to California law would have prevented their marriage without the consent of their parents. A week after their return the would-be wife tired of the marriage state and went home. Suit was thereupon brought to have the marriage affirmed. The court, however, granted the prayer of the defendant that the plaintiff be "precluded from ever setting up to be her husband."

The decision is doubtless sound, but the reasoning is not quite satisfactory. The parties, say the court, went away simply to avoid compliance with the law of their domicile; this marriage therefore will not be held valid unless contracted under some recognized law. No such law here existed, and the marriage was void. While there is little authority on the point, it seems nevertheless clear that cases may exist of marriages which are valid though celebrated under no recognized law. If parties are travelling abroad and under the local law they cannot validly marry, they may contract in the forms used in their domicile, and the marriage will there be recognized. *Kent* v. *Burgess*, 11 Sim. 361. Under such circumstances it has been said that, if these forms could not be complied with, there might be a good marriage by mere consent of the parties.

Lord Campbell, in *Beamish* v. *Beamish*, 9 H. L. Cas. 274. Theoretically, too, it is generally recognized that parties cast away on an unknown island could marry according to their own forms. Granted that all other conditions to a valid marriage are present, it is hard to discover in what way the presence of fraud upon the home law can be of any effect. It is punishable, but it cannot change the environment on which validity depends. See 11 HARVARD LAW REVIEW, 546. However this may be, the court would have been more clearly correct had they based their decision on the admitted principle that a ship carries with it the law of its State. *Crapo* v. *Kelly*, 16 Wall. U. S. 610; *McDonald* v. *Mallory*, 77 N. Y. 546. By this principle the parties were practically married in California, and were subject to the State laws.

MERGER OF CHARGES. — When there have been successive mortgages upon land and the first mortgagee buys up the first equity of redemption, it is of practical value to him to know whether that mortgage is extinguished. If it be extinguished, the second mortgagee has a first charge for which the land is liable; if, however, the first may still be regarded as existing, the second mortgage remains a second. When the land is not of sufficient value to satisfy both incumbrances the importance of the question is apparent. Equity, in accordance with sound justice, laid down the rule that when a charge, of any nature, vests in the owner of the property subject to that charge though *prima facie* it is merged, yet it may be regarded as existing if the holder has expressed an intention to that effect, and, in the absence of evidence of an intention, the court will consider what is most advantageous for him. *Forbes* v. *Moffatt*, 18 Ves. Jr. 390. But equity will not aid fraud, so there came a modification, — that a mortgagor who pays off the first charge cannot hold his extinguished debt as a shield against a second incumbrance. With this modification, *Forbes* v. *Moffatt* is still the law in the United States. *James* v. *Moray*, 2 Cow. 246; *Factors, &c. Ins. Co.* v. *Murphy*, 111 U. S. 738.

In England, however, the case of *Toulmin* v. *Steere*, 3 Mer. 210, declared that this modification extended to a purchaser of the equity of redemption, and that if he later obtained the mortgagee's interest in the land, he might not keep it alive to defeat the claim of a second incumbrance of which he had notice. The ground taken was that the purchaser with notice from a mortgagor should not be in a better position than the mortgagee. But it seems clear that he stands in a different relation to the mortgagor. He is not a debtor; he is not attempting to set up an extinguished debt. He paid for the mortgagor's rights in the land, and there is no reason why the second mortgagee should have his claim turned into a first mortgage by a transaction to which he is a stranger, in which no such result was intended by the parties. This is, indeed, the typical case where equity will interfere according to *Forbes* v. *Moffatt*, and the later decision is the more remarkable because the opinions in both cases were delivered by Sir William Grant, M. R.

The new doctrine was often adversely criticised, then entirely metamorphosed by Jessel, M. R., in *Adams* v. *Angell*, 5 Ch. D. 646, who explained that its application was limited to cases where there was no evidence of intention in regard to merger. Even thus restricted, the doctrine was at variance with *Forbes* v. *Moffatt*, and continued to be dodged and ignored until *Liquidation Estates Purchase Co.* v. *Willoughby*,